Sungino v. Blaluk, 13 ROP 134 (2006)

FRANCISCO SUNGINO,
Appellant,

v.

ONGALK RA BLALUK, MURAKO DECHERONG, ROSANG NGIRAKESAU, and NGARAARD STATE REPUBLIC LAND AUTHORITY,
Appellees.

CIVIL APPEAL NO. 04-011
LC/E 01-354 and LC/E 01-395

Supreme Court, Appellate Division
Republic of Palau

Argued: May 17, 2006
Decided: June 12, 2006

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee NSPLA: Christopher L. Hale

Counsel for Appellees Ongalk ra Blaluk, Murako Decherong, and Rosang Ngirakesau: Pro se

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice.

Appeal from the Land Court, J. UDUCH SENIOR, Senior Judge; RONALD RDECHOR, Associate Judge; and SALAVADOR INGEREKLII, Associate Judge, presiding.

PER CURIAM:

BACKGROUND

This appeal follows the Land Court's adjudication of competing claims of ownership of land located in Elab Cunty, Ngaraard State. Of the eleven claimants below, Francisco Sungino ("Francisco") is the only claimant to have filed an appeal. Before the Land Court, Francisco claimed ownership of Tochi Daicho Lot 1147 ("Lot 1147") and lands that he argued were later added to Lot 1147 by accretion. [1] Like Francisco, Appellee ⊥135 Murako Decheerong

[1] The land that was the subject of dispute below included Tochi Daicho Lots 1145, 1146, 1147, 1254, and 1255. These five lots include nineteen parcels identified as worksheet lot numbers 01E04-052, 01E04-053, 01E04-054, 01E04-055, 01E04-055A, 01E04-056, 01E04-056A, 01E04-057, 01E04-057A, 01E04-058, 01E04-058A, 01E04-059, 01E04-060, 01E04-061, 01E04-062, 01E04-062A, 01E04-063, 01E04-064, and 01E04-065. The only two lots that were the subject of dispute below the Francisco did not claim were worksheet lot numbers 01E04-060 and 01E04-061; therefore, Palau Evangelical Church,

("Murako") claimed that, along with her sister Rosang Ngirakesau ("Rosang"), she owned Lot 1147. Appellee Ngaraard State Public Lands Authority ("NSPLA") claimed Tochi Daicho Lots 1145, 1146, 1254, and 1255, which were comprised of the parcels of land that Francisco asserted had accreted to Lot 1147. Finally, Appellee Ongalk ra Blaluk ("Blaluk") claimed Lot 1254.

Babul, Appellant Francisco's maternal grandfather and adopted father, was listed in the Tochi Daicho as the individual owner of Lot 1147. Before the Land Court, Francisco claimed that Babul had transferred ownership of Lot 1147 to him in 1977 by warranty deed. [2] The Land Court determined that in 1952, Babul, through his wife Youlsau, transferred Lot 1147 to Murako and Rosang at the eldecheduch of their father, Ngirakesau, who was chief and Youlsau's uncle. Citing *Takawao v. Sechelong* , 1 ROP Intrm. 130, 131 (Tr.Div.1984), the Land Court found that this transfer
was in keeping with Palauan custom, which requires the chief's sister's daughter to pay elbechiil upon the chief's death. Moreover, the Land Court hels that the evidence demonstrated Babul's unequivocal intention to make a gift of his land to Murako and Rosang. As this transfer occurred before the 1977 warranty deed purporting to transfer Lot 1147 from Babul to Francisco, the court concluded that Francisco's claim failed because Babul did not own the land at the time of the attempted transfer. Thus, Murako and Rosang were determined to be the individual owners of Lot 1147, which included the parcels of land identified as worksheet lot numbers 01E04-052, 01E04-053, 01E04-054 - part, 01E04-055 - part, and 01E04-062A - part.

The Land Court held that NSPLA owned Lot 1145, comprized of worksheet lot numbers 01E04-063 and 01E04-064; Lot 1146, comprised of 01E04-055 - part, 01E04-055A, 01E04-057, 01E04-057A, 01E04-058, 01E04-058A, 01E04-062, and 01E04-062A - part; and Lot 1255, comprised of worksheet lot number 01E04-065 based on NSPLA's evidence that the other claimants to these parcels had leased the land from the government. However, the Land Court rejected NSPLA's claim as to Lot 1254, finding that worksheet lot number 01E04-054, 01E04-056, 01E04-056A, and 01E04-059 were owned by Blaluk, who had presented evidence that he and his children had lived continuously on these lots to the exclusion of others for over forty years.

Francisco filed the instant appeal, arguing that the Land Court erred in relying on the1959 judgment in *Dirraiwtechong Ocheraol, Murako and Rosa v. Blaluk* , Civil Action No. 94, in holding that Murako owned Lot 1147 because the action concerned Lot 1150 and not Lot 1147. Francisco also submits that, despite recognizing the rule concerning ownership of land created by accretion, the Land Court erred in failing to award him land that was added to Lot 1147 by accretion. NSPLA is the only Appellee to have filed a response brief. NSPLA first ⊥136
contends that Francisco's argument as to the alleged mix-up of Lot 1147 with Lot 1150 ignores the evidence and credibility determinations made by the Land Court in an attempt to have the Appellate Division reweigh the evidence presented below. NSPLA next submits that Francisco's argument does not apply to the property awarded to NSPLA because NSPLA was only awarded

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which was awarded these two lots, is not a party to this appeal. Likewise, claimants Uriik Temengil, Iluches Reksid, Ongalk ra Ikeya, Catholic Mission, Inc., Ngirairikl Uong, and Ongalk ra Ngirairikl are not parties on appeal because the Land Court did not award them any of the parcels disputed below.

[2] This same deed also purported to transfer ownership of Lot 1150 from Babul to Francisco.

parcels within Lots 1145, 1146, and 1255, and not parcels within Lots 1147 or 1150.

STANDARD OF REVIEW

Land Court findings of fact are reviewed under a clearly erroneous standard. *Aribuk v. Rebluud*, 11 ROP 224, 225 (2004)(citing *Tesei v. Belechal* , 7 ROP Intrm. 89, 89-90 (1998)). Under this standard, if the Land Court's findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that an error has been made. *Id.* (citing *Kerradel v. Besebes* , 8 ROP Intrm. 104, 105 (2000)). A court's choice between two permissible views of the evidence cannot be considered clearly erroneous. *Saka v. Rubasch* , 11 ROP 137, 141 (2004) (citing *Rechucher v. Ngirmeriil*, 9 ROP 206, 211 (2002)).

ANALYSIS

Francisco first asserts that the Land Court erred in rejecting the 1977 warranty deed transferring ownership of Lot 1147 from Babul to Francisco because the court relied on Civil Action No. 94 to find that Murako and her sister were the owners of Lot 1147.[3] Francisco argues that this reliance was erroneous, as Civil Action No. 94 involved Lot 1150 and not Lot 1147. He submits that this mistake was likely due to the fact that these lots are adjacent to each other except for a road that separates them.

Francisco's argument fails because the Land Court did not base its decision that Murako, and her sister Rosang, were the owners of Lot 1147 solely on the decision in Civil Action No. 94. In fact, the Land Court recognized that the decision in Civil Action No. 94 concerned Lot 1150. *See* Summary of Claims, Findings of Fact, Conclusions of Law and Determinations of Ownership at 34 and 37 (Mar. 31, 2004) ("Land Court Findings"). Furthermore, the Land Court recognized that Civil Action No. 94 was not binding on Francisco because he was not a party to that action, but nevertheless found that documents filed in that action and submitted to the Land Court by Francisco in the instant action contained information tending to support Murako's claim.[4] Moreover, the Land Court also relied on evidence not filed in Civil Action No. 94 and made credibility determinations as to witness testimony in ⊥137 finding that ownership of Lot 1147 had been transferred to Murako and Rosang in 1952, long before Babul purported to transfer the land to Francisco by the 1977 warranty deed. [5] Finally, the Land Court discussed

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[3]This argument only involves Appellee Murako because NSPLA and Blaluk were not deemed owners of any parcels included in Lot 1147.

[4] In a pretrial order in Civil Action No. 94, the court noted that Blaluk, despite the dispute with Murako and Rosang over land, asserted that parcels of Babul's land *located on both sides of the road* were to be given to Murako and Rosang at their father's *eldecheduch.* The Land Court also discussed a sketch submitted in the Civil Action No.94, finding that the land marked with an X was most likely Lot 1150. The X is marked on the same side of the road as Francisco submits Lot 1150 is located. Ths, the Land court once again demonstrated that it was aware that Civil Action No. 94 involved Lot 1150 and not Lot 1147.

[5] The Land Court found that Francisco's witnesses were not credible. In addition to questioning the bias or other motives of Francisco's biological parents in testifying, "[t]he court [wa]s not persuaded that [his father's] memory from six years old without corroborating testimony from other knowledgeable

Francisco's reliance on the 1977 warranty deed, noting that the deed not only attempted to transfer ownership of Lot 1147 from Babul to Francisco but also claimed to transfer ownership of Lot 1150. As the court in Civil Action No. 94 determinted in 1959 that Blaluk had owned and sold Lot 1150 to Bethania, the Land Court held that the attempted transfer of Lot 1150 from Babul to Francisco by deed in 1977 was defective. The Land Court considered the defectiveness of that transfer in concluding that the alleged transfer of Lot 1147 by the same deed was also defective. For all of these reasons, it is clear that the Land Court (1) was aware that Lot 1150, and not Lot 1147, was the subject of Civil Action No. 94; (2) did not base its decision solely on evidence presented in Civil Action No. 94; and (3) determined that Murako and Rosang owned Lot 1147 after considering all of the evidence presented and making a credibility determination as to that evidence.

In situations "where there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous." *Uchelkumer Clan v. Isechal*, 11 ROP 215, 219 (2004) (citations omitted). Furthermore, "it is not the duty of the appellate court to test the credibility of the witnesses, but rather to defer to a lower court's credibility determination." *Palau Pub. Lands Auth. V. Tab Lineage*, 11 ROP 161, 165 (2004) (citing *Kerradel v. Elbelau*, 8 ROP Intrm. 36, 39 (1999)). A review of the record reveals that the evidence presented supported the Land Court's factual findings. Moreover, as the Land Court did not mistake Lot 1150 for Lot 1147, which is Francisco's only assertion of error on appeal as to the determination of ownership of Lot 1147, and based its decision on credibility determinations as to the witnesses' testimony and other evidence, the Land Court's determination of ownership for Lot 1147 was not clearly erroneous.

Next, Francisco argues that the Land Court erred in finding that NSPLA owned the parcels of land identified as worksheet lot numbers 01E04-055 - part, 01E04-055A, 01E04-057, 01E04-057A, 01E04-058, 01E04-058A, 01E04-062, 01E04-062A - part, 01E04-063, 01E04-064, and 01E04-065, and the Blaluk owned worksheet lot numbers 01E04-054, 01E04-056, 01E04-056A, and 01E04-059. Specifically, he asserts that these parcels became a part of Lot 1147 by accretion. Francisco's argument fails because, even if these parcels should have been deemed part of Lot 1147 by accretion, as discussed above, the Land Court did not err in determining that he did not own Lot 1147. As Francisco is not the ⊥138 owner of Lot 1147, he cannot successfully claim ownership to any land accreted to said lot.[6]

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witnesses [wa]s believable. The court [found] it highly improbable that a six year old child is able to retain a vivid and accurate memory of the surrounding topography of [the land] almost 76 years later." Land Court Findings at 34. Moreover, the Land Court rejected Francisco's testimony noting that "[t]he entirety of Francisco Sungino's testimony like that of his witnesses [wa]s largely self-serving, uncorroborated and affected with bias and self-interest." *Id*. at 35. On the other hand, the Land Court found that Murako's claim was "corroborated by at least two independent sources: Sekang Shmull and the lease agreements." *Id*. At 38.

[6] Aside from asserting that these parcels are situated seaward of Lot 1147 beyond its original natural shoreline, Francisco fails to proffer any argument as to why this Court should find the Land Court's determination as to these parcels clearly erroneous. The Land Court determined that these parcels made up Tochi Daicho Lots 1145, 1146, 1254, and 1255 as opposed to being land that was merely accreted to Lot 1147. The Tochi Daicho listed the Palau Administration as the owner of Lots 1145, 1146, and 1255, and an individual as the owner of Lot 1254, which was the lot the Land Court found that Blaluk

CONCLUSION

For the above reasons, we affirm the Land Court's Determination of Ownership.

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had been occupying for forty years with no objection by anyone or lease from the government. The Land Court noted that "[t]he identification of land owners in the Tochi Daicho is presumed to be correct and the burden is on the party contesting a Tochi Daicho listing to show by 'clear and convincing' evidence that it is wrong." Land Court Findings at 24 (citations omitted). After weighing the evidence, the Land Court held that the claimants who are not a party to the instant appeal had failed to demonstrate by clear and convincing evidence that the Tochi Daicho was incorrect. The Land Court also rejected Francisco's argument that someone messed up the Tochi Daicho by registering the lands newly accreted to Lot 1147 as Lots 1145, 1146, 1254, and 1255. The fact that these parcels are located between Lot 1147 and the sea does not provide clear and convincing evidence that the Tochi Daicho listings as to this land were incorrect and that the land accreted to Lot 1147 after the creation of the Tochi Daicho. As Francisco provided no other argument except to suggest that someone "messed up" in listing there parcels in the Tochi Daicho as lots separate from Lot 1147, the Land Court's determination that he did not overcome the presumption of validity of the Tochi Daicho or Blaluk's evidence of continuous occupation of the land for forty years was not clearly erroneous.